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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/888,352   | 06/22/2001  | Julian D. Waldman    | SONY 3.0-053        | 8896             |
| 530  | 7590        | 04/21/2006           | EXAMINER            |                  |
| LERNER, DAVID, LITTENBERG,<br>KRUMHOLZ & MENTLIK<br>600 SOUTH AVENUE WEST<br>WESTFIELD, NJ 07090 |             |                      | RUDY, ANDREW J      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      |                     | 3627             |

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/888,352             | WALDMAN, JULIAN D.  |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Andrew Joseph Rudy     | 3627                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 February 2006.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-47 is/are pending in the application.

4a) Of the above claim(s) 1-17 and 27-41 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 18-26 and 42-47 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. Claims 18-26 and 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramaswamy, US, 6,423,892, in view of Ronning, US 5,883,954.

Ramaswamy discloses a portable communication device, e.g MP3 player, comprising input for receiving a sampled portion of a full audio work, a database operative to store therein audio works, e.g. content sites, and downloads the audio to the device. Ramaswamy does not specifically disclose comparison information.

Ronning discloses, e.g. Figs. 3, 4a, 5, 7, 8, 10, 15, 17, 18, 20, comparison sampling audio works for use in identifying full audio works from a database operative to store therein audio works.

To have provided a comparison sampling for Ramaswamy would have been obvious to one of ordinary skill in the art in view of Ronning. The motivation for having done such would have been using common knowledge sampling of audio works before purchasing such.

Applicant's REMARKS have been reviewed, but are moot in light of the new grounds of rejection.

It is further noted that intended use claim language, e.g. for use in, is given less patentable weight than positively recited claim language, e.g. a portable communications device.

2. Further references of interest are noted on the attached PTO-892.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrew Joseph Rudy  
Primary Examiner  
Art Unit 3627